Wong Siew Choong Sdn Bhd v Anvest Corporation Sdn Bhd

COURT OF APPEAL (KUALA LUMPUR) — APPEAL NO W–02–866 OF 1999
MOKHTAR SIDIN, ABDUL KADIR SULAIMAN AND ALAUDDIN JJCA
29 APRIL 2002

Land Law *— Sale of land — Beneficial ownership — Whether specific performance involve a judgment on the status of a contract — Where only a portion of the land had been acquired — Whether amount of compensation belongs to the purchaser as a beneficiary of the land*

The appellant was the registered owner of all that piece of land, situated in the town and district of Kuala Lumpur ('the said land'). A dispute arose over the transfer of the said land to the respondent culminating in the respondent issuing a writ against the appellant claiming inter alia, for specific performance and damages for breach of contract in lieu of or in addition to specific performance. The learned judge hearing the suit, dismissed the suit. On appeal by the respondent, the Court of Appeal by its order of 9 December 1997 allowed the appeal and ordered that the case be remitted to the High Court for compliance with the terms of the agreement between the parties. On a further appeal, the Federal Court affirmed the decision of the Court of Appeal. Following the order of the Court of Appeal, the respondent applied to the High Court for specific performance of the contract by the appellant. In reply, the appellant affirmed that the respondent has no rights or has not acquired rights in relation to the compensation paid for the acquired portion of the said land. To this, the respondent filed a further affidavit to the effect that from the information received, the appellant had received an award of RM5,252,783.20 on 2 July 1997 in respect of that portion of the said land acquired by the government. Its contract with the appellant was for the whole area of the said land and that now the area to be conveyed by the appellant would be less by the amount of the acquired portion. Therefore, the said sum of RM5,252,738.20 being the acquisition award paid to the appellant, should be deducted from the total purchase price of RM5,551,370 which is based on RM55 per sq ft. Having considered the various evidence tendered and the submissions made by the parties, the learned judge made the order in terms. On the single issue before him, he held that the respondent was the beneficial owner of the said land at the time of the land acquisition. Therefore, the said acquisition award of RM5,252,783.20 belonged to the respondent and must be deducted from the purchase price. The appellant who is aggrieved over this decision of the learned judge now appealed to this court.

Held, dismissing the appeal:

(1) Since the decision of the Court of Appeal, which was affirmed by the Federal Court, it is beyond dispute that there is a valid

contract of sale of the said land to the respondent. The said land to be sold has a total area of 100,934sq ft at an agreed price of RM55 per sq ft making a total purchase price of RM5,551,370. There is no express contract as to the time of delivering possession. The contract stipulates that 10% of the purchase price will be paid only on the signing of the sale and purchase agreement, which never took place. Hence, the 10% has not come into operation. As to the balance of the purchase price, it is only due six months after the signing of the sale and purchase agreement. So, applying the doctrine in *Lysaght v Edwards* (1876) 2 ChD 499, the appellant vendor becomes in equity the trustee for the respondent purchaser of the said land sold, and the beneficial ownership passes to the purchaser subject to the appellant's right to the purchase money, a charge or lien on the said land for the security of the purchase money and a right to retain possession of the said land until the purchase money is paid by the respondent (see pp 148C, 152F–H).

(2) As events turned out, a minor portion of that said land had been converted into compensation money of RM5,252,783.20 which was paid to the appellant by the government. As a trustee for the respondent in respect of the said land, upon the respondent paying the purchase price of RM5,551,370 which was agreed by the contract of sale of the said land, the beneficial ownership in the remaining portion of the said land which was not the subject matter of acquisition by the government, plus the compensation money paid in respect of the acquired portion of the said land, would pass to the respondent (see pp 152H–153A).

[Bahasa Malaysia summary

Perayu adalah pemilik berdaftar ke atas semua bidang tanah, yang terletak dalam pekan atau daerah Kuala Lumpur ('tanah tersebut'). Satu pertikaian telah timbul tentang pemindahan tanah tersebut kepada responden di mana kemuncaknya responden telah mengeluarkan satu writ terhadap perayu menuntut antara lain, untuk pelaksanaan spesifik dan ganti rugi untuk perlanggaran kontrak sebagai ganti atau sebagai tambahan kepada pelaksanaan spesifik. Hakim yang bijaksana yang mendengar guaman tersebut, telah menolak guaman tersebut. Semasa rayuan dibuat oleh responden, Mahkamah Rayuan melalui perintah-perintahnya pada 9 Disember 1997 telah membenarkan rayuan tersebut dan telah memerintahkan agar kes tersebut diremitkan ke Mahkamah Tinggi untuk mematuhi terma-terma perjanjian antara pihak-pihak tersebut. Berdasarkan rayuan selanjutnya, Mahkamah Persekutuan telah mengesahkan keputusan Mahkamah Rayuan tersebut. Berikutan perintah Mahkamah Rayuan tersebut, responden telah memohon kepada Mahkamah Tinggi untuk pelaksanaan spesifik terhadap kontrak oleh perayu tersebut. Sebagai jawapan, perayu telah mengesahkan bahawa

A responden tidak mempunyai apa-apa hak atau tidak memperoleh apa-apa hak berkaitan pampasan yang dibayar untuk bahagian yang diperolehi ke atas tanah tersebut. Oleh itu, responden telah memfailkan satu afidavit selanjutnya lebih kurang begitulah bahawa daripada maklumat yang telah diterima, perayu telah menerima satu award berjumlah RM5,252,783.20 pada 2 Julai 1997 berhubung B bahagian tanah tersebut yang telah diperolehi oleh kerajaan. Kontraknya dengan perayu adalah untuk keseluruhan kawasan tanah tersebut dan sekarang kawasan tersebut yang akan dipindah hak oleh perayu akan kurang daripada jumlah bahagian yang diperolehi. Oleh itu, jumlah RM5,252,738.20 yang merupakan award perolehan yang dibayar kepada perayu, hendaklah ditolak daripada harga belian C keseluruhan RM5,551,370 berdasarkan RM55 sekaki persegi. Setelah mempertimbangkan pelbagai keterangan yang ditenderkan dan hujah-hujah yang dibuat oleh pihak-pihak tersebut, hakim yang bijaksana telah membuat perintah seperti dipohon. Berhubung satu-satunya persoalan di hadapan beliau, beliau memutuskan bahawa responden D adalah pemilik benefisiari tanah tersebut pada masa perolehan tanah tersebut. Oleh itu, award perolehan berjumlah RM5,252,783.20 adalah milik responden dan mesti ditolak daripada harga belian. Perayu yang terkilan akan keputusan hakim yang bijaksana ini sekarang membuat rayuan kepada mahkamah ini.

E **Diputuskan**, menolak rayuan tersebut:

(1) Sejak keputusan Mahkamah Rayuan tersebut, yang telah disahkan oleh Mahkamah Persekutuan, ia adalah di luar pertikaian bahawa terdapat kontrak jualan yang sah ke atas tanah tersebut kepada responden. Tanah tersebut yang akan dijual F mempunyai kawasan keseluruhan berjumlah 100,934 kaki persegi yang mempunyai nilai harga belian keseluruhan berjumlah RM5,551,370. Tiada kontrak yang nyata berhubung masa hantar serah milikan. Kontrak tersebut menyatakan bahawa 10% daripada harga belian akan dibayar hanya setelah perjanjian jual beli ditandatangani, yang tidak pernah berlaku. Justeru itu, 10% G tersebut tidak beroperasi. Berhubung baki harga belian tersebut, ia hanya perlu dibayar enam bulan selepas perjanjian jual beli ditandatangani. Oleh itu, dengan menerapkan doktrin dalam *Lysaght v Edwards* (1876) 2 ChD 499, penjual perayu menjadi pemegang amanah dalam ekuiti untuk pembeli responden ke atas tanah tersebut yang dijual, dan pemunyaan benefisiari akan H berpindah kepada pembeli tertakluk kepada hak perayu ke atas wang belian, satu gadaian atau lien ke atas tanah tersebut sebagai jaminan untuk wang belian tersebut dan satu hak untuk mengekalkan milikan ke atas tanah tersebut sehingga wang belian tersebut dibayar oleh responden (lihat ms 148C, 152F–H).

I (2) Akibat daripada peristiwa-peristiwa tersebut, sebahagian kecil tanah tersebut telah dapat dijadikan wang pampasan sebanyak RM5,252,783.20 yang telah dibayar kepada perayu oleh kerajaan.

Sebagai pemegang amanah bagi pihak responden berhubung tanah tersebut, setelah responden membayar harga belian berjumlah RM5,551,370 sebagaimana yang dipersetujui dalam kontrak jualan tanah tersebut, pemunyaan benefisiari ke atas bahagian tanah tersebut yang masih tinggal yang bukan perkara pokok perolehan oleh kerajaan, dan juga wang pampasan yang telah dibayar berkaitan bahagian tanah tersebut yang diperolehi, akan berpindah kepada responden (lihat ms 152H–153A).]

Notes

For cases on beneficial ownership, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3392–3399.

Cases referred to

Anvest Corp Sdn Bhd v Wong Siew Choong Sdn Bhd [1998] 2 MLJ 30 (refd)
Johnson & Anor v Agnew [1979] 1 All ER 883 (refd)
Lee Seng Hock v Fatimah bte Zain [1996] 3 MLJ 665 (refd)
Lim Kim Som v Sheriffa Taibah bte Abdul Rahman [1994] 1 SLR 392 (refd)
Lysaght v Edwards (1876) 2 ChD 499 (folld)
M & J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor [1994] 1 MLJ 294 (refd)
Temenggong Securities Ltd & Anor v Registrar of Titles, Johore & Ors [1974] 2 MLJ 45 (refd)
Wong Siew Choong Sdn Bhd v Anvest Corp Sdn Bhd [1999] 3 MLJ 577 (refd)

Legislation referred to

Land Acquisition Act 1960
Specific Relief Act 1950 ss 12, 13

Logan Sabapathy (*Harcharan Singh* and *P Gananathan*) with him (*Harcharan & Co*) for the appellant.

Wong Kim Fatt (*Gulam & Wong*) for the respondent.

Abdul Kadir Sulaiman JCA (delivering judgment of the court): The appellant was the registered owner of all that piece of land known as Lot No 129, s 44, held under grant no 6853 measuring 100,934sq ft (9,377sq m) or thereabouts, situated in the town and district of Kuala Lumpur ('the said land'). By a letter dated 11 October 1988, the respondent's agent wrote to the appellant:

Proposed Sale of Property held under Lot No 129, s 44, Town and District of Kuala Lumpur (100,934 sq ft)

We are pleased to inform you that the purchaser has confirmed to purchase the abovementioned land.

A The terms and conditions, as agreed, are as follows —

(1) the price is at $55 per sq ft;

(2) the property has a freehold title;

(3) you are able to give vacant possession of the property;

B (4) 10% (ten per centum) of the price will be paid on signing of the sale and purchase agreement; and

(5) the balance 90% (ninety per centum) to be paid 6 (six) months after the signing of the sale and purchase agreement.

The purchaser's solicitors are:

C Mr Choong Pee Choy of

M/s Choong & Co

Room 805/807, 8th Floor

Lee Wah Bank Building

Medan Pasar

D 50050 Kuala Lumpur

Tel: 2384682/2320858

Kindly confirm the abovementioned terms and conditions by signing and returning the duplicate copy of this letter.

E By an endorsement dated 14 October 1988, the appellant responded as follows:

The abovementioned terms and conditions are confirmed herewith.

WONG SIEW CHOONG SDN BHD
Managing Director.

F A dispute arose over the transfer of the said land to the respondent culminating in the respondent issuing a writ against the appellant claiming inter alia, for specific performance and damages for breach of contract in lieu of or in addition to specific performance.

G The learned judge hearing the suit, dismissed the suit. On appeal by the respondent, the Court of Appeal by its order of 9 December 1997 allowed the appeal and ordered that the case be remitted to the High Court for compliance with the terms of the agreement between the parties. In its written judgment of 16 February 1998, the Court of Appeal says (at p 48 of *Anvest Corp Sdn Bhd v Wong Siew Choong Sdn Bhd* [1998] 2 MLJ 30:

H Conclusion

For the reasons we have stated, we allowed the appeal of the appellant [the respondent before us] with costs here and below, and set aside the order of the learned judge. The deposit is to be refunded to the appellant. We directed that this case be remitted to the High Court regarding the proper order to be made for the completion of the contract between the appellant (Anvest Corporation I Sdn Bhd) and the respondent (Wong Siew Choong Sdn Bhd) as embodied in the letter dated 11 October 1988 (AR 196) written by appraisal to the respondent and confirmed by the respondent.

On further appeal by the appellant to the Federal Court against the said decision of the Court of Appeal, the appeal was dismissed and the Federal Court affirmed the decision of the Court of Appeal mentioned earlier. In its written judgment of 1 July 1999, it says (at p 581 of *Wong Siew Choong Sdn Bhd v Anvest Corp Sdn Bhd* [1999] 3 MLJ 577:

> ... We further agree that a binding and enforceable contract had been concluded between the parties by 14 October 1988 vide correspondence AR 253, 254 and 256 ... In our view, the Court of Appeal was justified and was right in reversing the decision of the learned trial judge and directing the case to be remitted to the High Court for proper order to be made as to the completion of the contract.

Hence, on the order of the Court of Appeal as affirmed by the Federal Court, it is beyond dispute that a contract for the sale of the said land subsists between the appellant and the respondent.

Following the order of the Court of Appeal, the respondent purchaser, by a summons in chambers of 20 May 1998, applied to the High Court for specific performance of the contract by the appellant. In its affidavit in support of the application affirmed by Kheoh And Yeng, its director, the respondent, however, deposed that part of the said land has since been acquired under the Land Acquisition Act 1960. Paragraph 5 of the said affidavit states as follows:

> According to the land title search on the said land conducted on behalf of the plaintiff on 25 March 1998, there is an endorsement of Form K, ie notice that possession has been taken of land, vide Presn No 292/97 dated 1 August 1997, in respect of 1,220sq m out of the total area of 9,377sq m of the whole of the said land. I am advised and verily believe that the compensation awarded by the land administrator in respect of the said 1,220sq m out of the said land should be deposited into court pending its further direction and completion of the sale and purchase agreement herein. A copy of the said land search report dated 25 March 1998 is annexed hereto and marked as exh KAY-4.

In reply, the appellant affirmed that the respondent has no rights or has not acquired rights in relation to the compensation paid for the acquired portion of the said land. To this, the respondent files a further affidavit to the effect that from the information received, the appellant had received an award of RM5,252,783.20 on 2 July 1997 in respect of that portion of the said land acquired by the government. Since its contract with the appellant was for the whole area of the said land and that now the area to be conveyed by the appellant would be less by the amount of the acquired portion. Therefore, the said sum of RM5,252,738.20 being the acquisition award paid to the appellant, should be deducted from the total purchase price of RM5,551,370 which is based on RM55 per sq ft.

The respondent's abovementioned summons in chambers went for hearing before the learned judge. In the course of the hearing, the learned counsel made an oral application for amendment to the said summons in chambers which was granted by the learned judge. The effect of the amendment is that the prayer for specific performance of the contract is in

respect of that piece of land less that portion acquired by the government, and the respondent is to pay only the balance of the purchase price amounting to RM298,586.80 after taking into account the amount representing the award over the acquired portion which was paid to and in the hand of the appellant. Hence, before the learned judge, the remaining issue to be determined is as to the beneficial ownership of the said land at the time of the land acquisition of a portion of the said land. Having considered the various evidence tendered and the submissions made by the parties, the learned judge on 29 September 1999 made the order in terms of the amended summons. On the single issue before him, he held that the respondent was the beneficial owner of the said land at the time of the land acquisition. Therefore, the said acquisition award of RM5,252,783.20 belonged to the respondent and must be deducted from the purchase price.

The appellant is aggrieved over this decision of the learned judge. Hence, this appeal before us now. Having heard the appeal, we, on 10 May 2001 dismissed it. We now give our reasons.

At the hearing before us, the learned counsel for the appellant submitted that the order of the Court of Appeal as affirmed by the Federal Court for specific performance has not resulted in the affirmation of the contract of sale between the parties into the judgment. The order of the Court of Appeal remitting the case to the High Court regarding the proper order to be made for the completion of the contract between the respondent and the appellant as embodied in the letter dated 11 October 1998 written by the respondent's agent to the appellant and confirmed by the appellant, is no more than the equitable jurisdiction of specific performance, says the learned counsel. The learned counsel based his submission over what was purportedly held by the House of Lords in *Johnson & Anor v Agnew* [1979] 1 All ER 883.

Having considered the matter, we do not think that we can agree with the submissions so made by the learned counsel. In the first place, how could the Court of Appeal make such an order directing the High Court for a proper order to be made for the completion of the contract between the appellant and the respondent if it finds that there is no subsisting contract between them? The order of the Court of Appeal for a proper order to be made by the reason that there was a subsisting binding contract between them and the completion of it is with a view to ultimately cloak the respondent with the legal estate which it bargained for. As such, *Johnson & Anor v Agnew* is not the authority for saying that specific performance does not involve a judgment on the status of the contract. On the contrary, before specific performance is called to be considered, there must first be a finding or decision that there subsists a binding contract between the parties. Lord Wilberforce in *Johnson & Anor v Agnew,* when speaking about the election between a claim for specific performance in equity and a claim for damages at common law, said at p 894:

> In my opinion, the argument based on irrevocable election, strongly pressed by the appellan"s counsel in the present appeal, is unsound. Election, though the subject of much learning and refinement, is in the end a doctrine based on

> simple considerations of common sense and equity. It is easy to see that a party who has chosen to put an end to a contract by accepting the other party's repudiation cannot afterwards seek specific performance. This is simply because the contract has gone, what is dead is dead. But it is no more difficult to agree that a party, who has chosen to seek specific performance, may quite well thereafter, if specific performance fails to be realized, say, 'Very well, then, the contract should be regarded as terminated'. It is quite consistent with a decision provisionally to keep alive, to say, 'Well, this is no use — let us now end the contract's life.' A vendor who seeks (and gets) specific performance is merely electing for a course which may or may not lead to implementation of the contract; what he elects for is not eternal and unconditional affirmation, but a continuance of the contract under control of the court which control involves the power, in certain events, to terminate it. If he makes an election at all, he does so when he decides not to proceed under the order for specific performance, but to ask the court to terminate the contract (see the judgment of Greene MR in *Austins of East Ham Ltd v Macey* [1941] Ch 338 at p 341). The fact is that the election argument proves too much. If it were correct it would deny the vendor not just the right to damages, but the right to 'rescind' the contract, but there is no doubt that right exists; what is in question is only the right, on 'rescission', to claim damages.

The learned counsel next questioned the decision of the learned judge in holding that the appellant vendor had to account for the amount of the compensation money which it got from the authority in respect of that portion of the said land acquired. This is so because, according to the learned counsel, to the extent of the portion acquired, the contract between the parties has been frustrated. He relied on the authority of *M & J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor* [1994] 1 MLJ 294. According to the facts in the case, the land of which Siland was the registered owner was ordered by court under the National Land Code 1965 ('NLC') to be sold by public auction at the instance of the chargee. At the sale, Frozen Food was the highest bidder and was pronounced the purchaser of the property. The purchaser paid 25% deposit over the total purchase price. As to the balance, the order was that it was to be paid into court within 30 days from the date of sale. This was not done by the purchaser. In view of this default, Siland entered a private caveat on the property and commenced an action for a rescission of the contract of sale and forfeiture of the 25% deposit paid by Frozen Food. On technical grounds, this caveat of Siland was removed, but before it was done. Frozen Food obtained an order for the completion date to be extended. In this application for extension of time to pay the balance, Siland was not made a party. However, consequent upon its application, Siland was granted leave to intervene and apply to set aside the order for extension of time. Subsequently, a year after the date of completion, Frozen Food forwarded the balance sum of the purchase price to the SAR who accepted it and issued the certificate of sale to Frozen Food who presented the certificate for registration.

Subsequently, Siland took out a summons in chambers for final judgment to be entered against Frozen Food who in turn applied for Siland's action to be struck out. Both summonses were heard

A simultaneously. The trial judge declared the deposit forfeited, annulled the certificate of sale issued by the SAR and cancelled the registration of transfer in respect of the property. The judge also made orders for the return of the issue document of title and ordered the property to be resold. Frozen Food appealed to the Supreme Court against this decision of the High Court.

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The issues before the Supreme Court were:

(1) whether in a sale of land in a public auction, the sale is completed at the fall of the auctioneer's hammer;

(2) whether court has the power to extend time for a defaulting purchaser C to complete the sale and purchase agreement after the agreed date of completion had passed; and

(3) whether in the event of a negative answer to either circumstance above, the High Court was empowered to make the order as it did.

The appeal of Frozen Food was dismissed by the Supreme Court, inter alia, D holding that any variation of the order of sale or the terms and conditions which in this case, the order for the extension of time to pay the balance of the purchase price, made thereunder in the absence of and without the service of the required notice upon Siland was ultra vires the authority to sell under the NLC. Hence, the extension order made by the SAR giving time to Frozen Food to make the payment was void as being ultra vires the E NLC. Following from there, the title to the property was unlawfully acquired by Frozen Food.

Such being the authority relied upon by the appellant in the present case, we cannot see any relevance the case has upon the matter before us now in this appeal. In the case of *M & J Frozen Food Sdn Bhd & Anor*, the F sale of the property to Frozen Food is considered to be frustrated but it is so in respect of the whole property involved. However, in the present case, the frustration if at all, as contended by the appellant, is in respect of only a minor portion of the said land, ie the acquired part but not in respect of the balance, which is still capable of specific performance. See ss 12 and 13 of the Specific Relief Act 1950 which state:

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> 12 Notwithstanding anything contained in s 57 of the Contracts Act 1950, a contract is not wholly impossible of performance because a portion of its subject-matter, existing, at its date, has ceased to exist at the time of the performance.
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> 13 Where a party to a contract is unable to perform the whole of his part of H it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

In the present case, the said land which forms the subject matter of the I agreement is 100,934sq ft (9,377sq m) in area. However, of it only 13131sq ft (1220sq m) was acquired. This acquired portion in relation to the whole area contracted is only a small portion of the whole. Hence, s 13 of the

Specific Relief Act 1950 would apply. If this is so, what is the compensation in money to be awarded in respect of that acquired portion? The learned judge says this in his judgment:

> An area of 1,220sq m (13,131.95sq ft) out of the total area of the said land was acquired by the Government at the rate of RM400 per sq ft. It is not in dispute that the defendant received an award of RM5,252,783.20 on 2 July 1997.

Under the provisions of s 13 of the Specific Relief Act 1950, this should be the compensation due to the respondent under the contract of sale it entered with the appellant. But there is more to it even without having resort to the provisions of the said s 13. In *Temenggong Securities Ltd & Anor v Registrar of Titles, Johore & Ors* [1974] 2 MLJ 45, Ong Hock Sim FJ in delivering the judgment of the Federal Court in the matter, at p 46 has this to say:

> In our view there can be no doubt as to the position in law. As was said by Jessel MR in *Lysaght v Edwards* (1876) 2 ChD 499 at p 506:
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> > '... the effect of a contract for sale has been settled for more than two centuries; certainly it was completely settled before the time Lord Hardwicke, who speaks of the settled doctrine of the court as to it. What is that doctrine? It is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase money, a charge or lien on the estate for the security of that purchase money, and a right to retain possession of the estate until the purchase money is paid, in the absence of express contract as to the time of delivering possession.'

Now, reverting back to the fact of the present case before us in this appeal, since the decision of the Court of Appeal which is affirmed by the Federal Court, it is beyond dispute that there is a valid contract of sale of the said land of the appellant to the respondent. The said land to be sold has a total area of 100,934sq ft at an agreed price of RM55 per sq ft making a total purchase price of RM5,551,370. There is no express contract as to the time of delivering possession. The contract stipulates that 10% of the purchase price will be paid only on the signing of the sale and purchase agreement, which never took place. Hence, the 10% has not come into operation. As to the balance of the purchase price, it is only due six months after the signing of the sale and purchase agreement. So, applying the doctrine in *Lysaght v Edwards* (1876) 2 ChD 499 a, the appellant vendor becomes in equity the trustee for the respondent purchaser of the said land sold, and the beneficial ownership passes to the purchaser subject to the appellant's right to the purchase money, a charge or lien on the said land for the security of the purchase money and a right to retain possession of the said land until the purchase money is paid by the respondent. However, as events turned out, a minor portion of that said land had been converted into compensation money of RM5,252,783.20 which was paid to the appellant by the government. As a trustee for the respondent in respect of the said land, upon the respondent paying the purchase price of RM5,551,370 which was

agreed by the contract of sale of the said land, the beneficial ownership in the remaining portion of the said land which was not the subject matter of acquisition by the government, plus the compensation money paid in respect of the acquired portion of the said land, would pass to the respondent. It is unfortunate though for the appellant that for a minor portion of the said land acquired, a big amount of compensation was paid, but as far as the law is concerned, that amount of compensation belongs to the respondent as a beneficiary of the said land. In the circumstances, the learned judge was right when he said in his judgment:

> The completion account of the sale and purchase of the said land should be as follows:

	RM
Total purchase price (100,934sq ft at the rate of RM55 PSF)	5,551,370.00
Less: Acquisition award	5,252 783.20
Amount Payable to the defendant	298,586.80

The cases of *Lim Kim Som v Sheriffa Taibah bte Abdul Rahman* [1994] 1 SLR 392 and *Lee Seng Hock v Fatimah bte Zain* [1996] 3 MLJ 665 concerning frustration of a contract for the sale of land can easily be distinguished on the facts of the present case. In the former, time is of the essence. Completion did not take place on the specified date. Soon after the specified date, the whole property was acquired. The compensation money was paid to the vendor through the court. The purchaser did not want to complete and asked for the return of the deposit, but the vendor wanted to forfeit the same. He brought an action for the balance of the purchase price or in the alternative, damages for breach. The High Court allowed the claim by the vendor and dismissed the counterclaim of the purchaser. The purchaser appeals on the ground of frustration due to acquisition and so could not deliver a good title. The appeal was allowed on a peculiar circumstance of the case. Again, in the latter case, the vendor is the administratrix of a deceased's estate. According to the Islamic law of inheritance in this case, the land devolved upon the vendor and Baitulmal in the proportion of a $^1/_2$ share each. Then the whole land was compulsorily acquired. Compensation money was paid to the vendor for her $^1/_2$ share of the property. The purchaser filed an application claiming for the said compensation money less the balance of the purchase price due under the agreement. The vendor pleaded frustration. The learned judge agreed and ordered that the compensation money in respect of her share of the inherited property be paid to her less the sum of RM4,000 being the 10% deposit to be refunded to the purchaser. The purchaser appealed against this decision. The appeal was dismissed by the Court of Appeal holding that frustration has occured. The case of *Lysaght v Edwards* was not discussed at the two proceedings.

For the reasons mentioned, we unanimously dismissed this appeal with costs to the respondent. The decision of the learned judge affirmed. A

Appeal dismissed.

Reported by Peter Ling

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